

defence to the action and that its entry was merely A for the purpose of delay.

Before I come to the defence it is necessary to state that the purpose of Order 14 is to enable a plaintiff to obtain summary judgment without trial if he can prove his claim clearly. See note to Order 14 under the heading "Judgment for Plaintiff" on page 243 of the Annual Practice 1958. I would emphasise on the word "clearly". The learned Deputy Registrar in this case had dismissed the appellants' application being of the view that there are triable issues which should go to trial. He said in his judgment that the amount of \$257,580 claimed by the appellants as loss and damages had been arrived at merely by taking the total of the contract price and subtracting it from the total market value at the relevant time in respect of which he said there was no evidence. Taking into account the transport expenses which the appellants would have to incur he felt that the amount claimed could not represent the actual loss and damages. In other words loss and damages would have to be properly assessed and such assessment would have to be made at the trial of the action.

At the hearing of this appeal it was submitted that having taken the view as he did the learned Deputy Registrar must have been satisfied that on the pleadings and affidavit liability for breach of contracts has been established against the respondents and if that be so he should have entered judgment for the appellants with damages to be assessed.

This is an action for breach of contracts and not an action for negligence in which case it is possible to give a finding on liability if it is clear on the pleadings and affidavits that negligence cannot be disputed. It is in this context that the purpose of Order 14 was earlier stated emphasising as I did on the word "clearly". In this case in view of the defence allegation of rescission modification and variation it is impossible to be satisfied that liability for breach of contracts has clearly been established. In any case I cannot see how in an application under Order 14 interlocutory judgment with damages to be assessed can be made as though it is an application for such judgment under Order 13 which is concerned with a situation in which no appearance has been entered. Here it was not suggested that appearance had not been entered by the respondents who, as it seems to me, filed their defence less than a month after the writ was served.

In all the circumstances of this case I am of opinion that the learned Deputy Registrar was right in giving the respondents unconditional leave to defend and that the learned judge was also right in dismissing the appellants' appeal.

I would for the reasons stated above dismiss this appeal with costs.

Gill Ag. L.P. and Ong Hock Sim F.J. concurred.

Appeal dismissed.

Solicitors: Skrine & Co.; K.C. Koh & Co.

KOK WEE KIAT (MRS.) v. KUALA LUMPUR STOCK EXCHANGE BHD. & ORS.

[F.C. (Gill C.J., Ali and Wan Suleiman F.JJ.)
November 13, 1976]

[Kuala Lumpur — Federal Court Civil Appeal No. 155 of 1975]

Practice and Procedure — Writ of summons — Generally indorsed — Claim for wrongful dismissal against first respondent — Claim for conspiracy to publish a defamatory statement and libel against the other respondents — Whether there is misjoinder — Trial judge ordering separate trial for claim for wrongful dismissal — Costs — R.S.C. 1957, O.18 r.1.

In this case the appellant had commenced action by a general writ of summons claiming as against the first respondent, damages for wrongful dismissal; and as against the other respondents, damages for conspiracy to publish a defamatory statement and libel. The first respondents applied by notice of motion that the appellant should elect whether to proceed with the action against the first respondents or against the other respondents. The learned trial judge directed that the distinct cause of action against the first respondents be tried first separately. He also ordered costs to be paid by the appellant. The appellant appealed.

Held: the trial judge has wide powers under Order 18 rule 1 of the Rules of the Supreme Court and was entitled to direct that the trial of the actions be conducted in a certain way but as he did not specifically find that the appellant was guilty of any misjoinder, she should not have been ordered to pay the costs. Costs should therefore follow the event.

Cases referred to:-

- (1) *Sandes v. Wildsmith* [1893] 1 Q.B. 771, 774.
- (2) *Citizen's Life Assurance v. Brown* [1904-7] All E.R. Rep. 295, P.C.
- (3) *Frankenburg v. Great Horseless Carriage Company* [1900] 1 Q.B. 504.
- (4) *Compania Sansinena De Carnes Congeladas v. Houlder Brothers & Co. Ltd. & Ors.* [1910] 2 K.B. 354.

HIGH COURT.

- F** *Wong Weng Kwai* for the plaintiff.
Peter Mooney for the 1st defendant.
Eugene K.H. Lye for the 2nd, 3rd, 5th-8th defendants.
Ng Ek Teong (Vincent Ponniah with him) for the 9th defendant.

G The judgment of the High Court was delivered on January 8, 1976:

Abdul Hamid J.: By Notice of Motion the Kuala Lumpur Stock Exchange Berhad, the first defendant, applied for an Order —

- H** (1) That the plaintiff be required to elect within fourteen (14) days whether to proceed with the action against the first defendant or against the second, third fourth, fifth, sixth, seventh, eighth and ninth defendants;
- (2) That if the plaintiff shall elect to proceed against the second to the ninth defendants that this defendant be struck out and that the Writ of Summons and Statement of Claim be amended accordingly;
- I** (3) That if the plaintiff shall elect to proceed against the first defendant, the second, third, fourth, fifth, sixth, seventh, eighth and ninth defendants be struck out and that the Writ of Summons and Statement of Claim be amended accordingly; and
- (4) That unless the plaintiff so elects within fourteen (14) days the Writ of Summons and all subsequent

proceedings be set aside and the action dismissed with costs.

Encik Peter Mooney appearing on behalf of the first defendant/applicant submitted that the action against the first defendant is essentially one for wrongful dismissal while the action against the other defendants is for libel and defamation and conspiracy to defame. It is the applicant's contention that in the light of the materials before the court, the applicant will be embarrassed and put to unnecessary expense by having been required to attend proceedings in which he has no interest. Encik Mooney urged the court to have regard to the fact that as against the applicant, the Writ is endorsed with a claim only for damages for wrongful dismissal. He referred to Order 16 rules 4 and 5 of Rules of Supreme Court which read —

"4. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment."

"5. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the court or a judge may make such Order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest".

He also referred to Order 18 rule 1, rule 8 and rule 9 of R.S.C. which for convenience I reproduce hereunder —

"1. Subject to the following Rules of this Order, the plaintiff may unite in the same action several causes of action; but if it appear to the court or a judge that any such causes of action cannot be conveniently tried or disposed of together, the court or judge may order separate trials of any such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof."

"8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together, may at any time apply to the court or a judge for an order confining the action to such of the causes of action as may be conveniently disposed of together."

"9. If, on the hearing of such application as in the last preceding Rule mentioned, it shall appear to the court or a judge that the causes of action are such as cannot all be conveniently disposed of together, the court or judge may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just."

Encik Mooney also submitted that the court may order the plaintiff to elect and urged the court to apply the test, namely, if two separate actions are brought, will the court order consolidation? Counsel cited the case of *Sandes v. Wildsmith*⁽¹⁾ where Wills J. had this to say —

"It seems to me not a bad test to ask whether, if two separate actions were brought in such a case as this, an order for consolidation would be made. I am of opinion that no court would consolidate such actions."

The English rule has since been changed and the existing rule is to be found under Order 15. (See Current Annual Practice (1973) page 170 under the heading "Application of Rule") where it is stated that the rule is a salutary provision enabling the court to exercise the effect of supervisory control over the joinder of parties and joinder of causes of action and it is also stated that the power of the court under the rule is

A discretionary. As for its application, it is pointed out that "The Rule applies where either the joinder of causes of action or the joinder of parties or both may embarrass or delay the trial or is otherwise inconvenient." Under this Rule, the court may take the initiative, but it would generally act upon the application of a party."

B Lastly, Encik Mooney urged the court to consider the facts of this case, in particular, the amount of damages claimed against the first defendant, the defence which is a simple denial, the reply, the absence of allegation of malice against the first defendant, the plaintiff's affidavit of documents and also the question of expense.

C Encik Wong Weng Kwai appearing on behalf of the plaintiff/respondent argued that the cause of action against the first defendant is not only for wrongful dismissal but also for breach of contract as well as libel.

It is the respondent's contention that the acts of other defendants could be imputed to the applicant on the authority that malice of servants could be imputed to the Corporation (see *Citizen's Life Assurance v. Brown*).⁽²⁾ It is also the respondent's contention that there is no provision in R.S.C. for the applicant to ask the respondent to elect.

Encik Ng Ek Teong counsel for the ninth defendant submitted that firstly, agency is not specifically pleaded in the Statement of Claim, not even under the amended Statement of Claim, and secondly, the additional claim against the first defendant constitutes an additional or new cause of action.

After hearing the submissions made by Encik Peter Mooney, Encik Wong and Encik Ng Ek Teong, I feel that on the pleadings as they stand and basing on the claim endorsed on the Writ issued and served on the applicant, it seems clear that the case against the applicant is essentially one for wrongful dismissal. I am mindful of the fact that the respondent has filed an Amended Statement of Claim and that counsel has asked for postponement to seek leave to amend the Writ of Summons, nonetheless, in dealing with the present application even if the Writ were subsequently amended and an additional or new cause of action against the applicant were included, I am strongly of the view that it is convenient and indeed it will save unnecessary expense if the claim against the applicant be confined to wrongful dismissal. I am further of the view that the trial of this cause of action should precede any other cause of action that may subsequently be included in the claim against the applicant.

As for the respondent's contention that there is no provision in the R.S.C. requiring the plaintiff to elect and that the action is properly brought against all the nine defendants, I am unable to see any real merit in the argument. It is true that under Order 18 rule 1 all causes of action may be joined and under Order 16 rule 4 all persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, however, the court may, if it appears to the court that any such causes of action cannot be conveniently tried or disposed of together, order separate trials of any such causes of action. On consideration I find that the

plaintiff's claim against the applicant is made up of a simple and straightforward issue and that the whole of such issue could be conveniently and speedily disposed of separately in the absence of all the other defendants. In the instant case the court of its own motion, assuming there is validity in the respondent's argument that the orders sought for by the applicant in the Notice of Motion are not covered by the Rules of Supreme Court, considers it appropriate indeed that justice will be done if an Order is made directing that the distinct cause of action against the applicant be separately tried and that the trial of such cause of action against the applicant should precede any other cause of action that may subsequently be included in the Statement of Claim. I therefore made the Order accordingly.

After hearing the argument of counsel in regard to costs, it is my judgment that it is appropriate in the instant case that costs of this application be paid by the plaintiff to all the defendants except the fourth and ninth defendants.

FEDERAL COURT.

Wong Weng Kwai for the appellant.

Peter Mooney for the 1st respondent.

Eugene K.H. Lye for the 2nd, 3rd, 5th-8th respondents.

Ng Ek Teong (Vincent Ponniah with him) for the 9th respondent.

Ali F.J.: By a general writ of summons issued on December 23, 1974 the appellant Mrs. Kok Wee Kiat nee Seet Poh Thiam commenced action claiming as against the first respondents, the Kuala Lumpur Stock Exchange Berhad, damages for wrongful dismissal; as against the other respondents she claimed damages for conspiracy to publish a defamatory statement and libel.

In paragraphs 5, 6 and 7 of her amended statement of claim she referred to the facts relating to her appointment, terms of employment and her dismissal which, she said was wrongful. In paragraph 8 she set out the particulars of special damages claimed against the first respondents amounting to \$9,753.30. The rest of her pleadings is confined to the alleged conspiracy to defame and alleged libel by the other 8 respondents for which she claimed general damages.

Apparently taking the view that there was a misjoinder of parties as well as a misjoinder of causes of action contrary to the relevant Rules of the Supreme Court the first respondents filed a Notice of Motion in the following terms:

"...that the plaintiff be required to elect within fourteen (14) days whether to proceed with the action against the first defendant or against the second, third, fourth, fifth, sixth, seventh, eighth and ninth defendants and that if the plaintiff shall elect to proceed against the second to the ninth defendants that this defendant be struck out and that the Writ of Summons and Statement of Claim be amended accordingly and that if the plaintiff shall elect to proceed against the first defendant, the second, third, fourth, fifth, sixth, seventh, eighth and ninth defendants be struck out and that the Writ of Summons and Statement of Claim be amended accordingly.

And that unless the plaintiff so elects within fourteen (14) days the Writ of Summons and all subsequent proceedings be set aside and the action dismissed with costs."

A As it seems to me the form of the order asked for is somewhat similar to that which was made by Channell J. in *Frankenburg v. Great Horseless Carriage Company*.⁽³⁾ The following passage on page 505 of the report reads thus:

"Subsequently the question was raised on behalf of several of the defendants that the plaintiff's claim improperly combined different causes of action against different defendants; and eventually Channell J., on December 1, 1899, made several orders in chambers dismissing the action as against the objecting defendants unless the plaintiff within ten days elected to amend the writ and statement of claim by striking out the names of the company and of the executors of the deceased director as defendants."

B The order or orders by Channell J., were, however, discharged by the Court of Appeal which took the view that in substance there was only one cause of action. The decision in *Frankenburg v. Great Horseless Carriage Company*⁽³⁾ was followed in *Compania Sarsinena De Carnes Congeladas v. Houlder Brothers & Co Limited & Ors.*⁽⁴⁾

C In the instant case it could be argued that in substance there is more than one cause of action. The cause of action for wrongful dismissal, for instance, is distinct and separate and that as it does not involve the other respondents the first respondents were justified in complaining of a misjoinder contrary to Order 16. However, as the learned judge, Abdul Hamid J., had not considered this I need only consider the order which he made and which is the subject of this appeal.

D In his judgment the learned judge said this:

"... In the instant case the court of its own motion, assuming there is validity in the respondent's argument that the orders sought for by the applicant in the Notice of Motion are not covered by the Rules of Supreme Court, considers it appropriate indeed justice will be done if an Order is made directing that the distinct cause of action against the applicant be separately tried and that the trial of such cause of action against the applicant should precede any other cause of action that may subsequently be included in the Statement of Claim. I therefore made the Order accordingly."

The Order, as it appears to me, was made under Order 18 rule 1 of the Rules which provides as follows:

E "Subject to the following Rules of this Order, the plaintiff may unite in the same action several causes of action; but if it appear to the court or a judge that any causes of action cannot be conveniently tried or disposed of together, the court or judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof."

F The learned judge has very wide powers under the Rules to make the Order which is nothing more than a direction that the trial of the action be conducted in a particular manner. As the learned judge will no doubt be hearing the action himself I do not think it is right or proper for this court to order that the trial be conducted in a manner different from what the learned judge has directed. Indeed, I do not think the appellant has any valid ground to appeal. I would dismiss it.

G There is, however, another ground of appeal which raised the question whether it is right to order the appellant to pay cost of the motion and the cost of the other respondents who are also made parties to the motion. In my view since the order made by the learned judge does not reflect any finding that the appellant is guilty of any misjoinder as was contended by the first respondents she should not be ordered to

pay costs. The Order as to costs is therefore varied so that costs must follow the event. The appellant shall pay half of the costs of this appeal, as taxed, to all respondents except No. 4. Deposit to be paid out to account of taxed costs.

Gill C.J. (Malaya) and Wan Suleiman F.J. concurred.

Appeal dismissed.

Solicitors: Mah-Kok & Din; Skrine & Co.; Ng Ek Teong & Partners; Eugene Lye & Co.

STATION HOTELS BERHAD v. MALAYAN RAILWAY ADMINISTRATION

[F.C. (Gill C.J. (Malaya), Ali and Ong Hock Sim F.J.J.)
November 13, 1976]

[Kuala Lumpur — Federal Court Civil Appeal No. 60 of 1976]

Landlord and Tenant — Whether premises are rent controlled premises — Whether property controlled and managed by Railway Administration is property belonging to the Government — Whether revocation or refusal to renew lease offends Article 153 of the Federal Constitution — Control of Rent Act, 1966, s. 4 — Railway Ordinance, 1948, ss. 4(1), 15(1) — R.S.C. 1957, O.14 & O.25 — Federal Constitution, arts. 13 and 153.

Constitutional Law — Rights of property — Cases of contractual rights — Federal Constitution, arts. 13 and 153.

In this case the respondents had brought an action against the appellants for vacant possession of the premises known as Station Hotel, Kuala Lumpur, which had been let to the appellants under a lease which had expired. The respondents applied for summary judgment under Order 14. The appellants raised three defences (a) that the premises were rent controlled premises; (b) that the appellants had been deprived of property without compensation and (c) that the refusal to renew the lease was in breach of Article 153 of the Federal Constitution. The learned trial judge rejected all three defences saying in his judgment that he was disposing of them before trial under Order 25 of the Rules of the Supreme Court. On appeal it was argued (a) that the learned judge was wrong in finding that the appellant was not a tenant protected by the provisions of the Control of Rent Ordinance (b) that the learned judge was wrong in holding that the revocation or refusal to renew the relevant leases and terms in favour of the appellant did not offend the provisions of Article 153 Clauses (7) and (8) of the Federal Constitution.

Held, (Gill C.J. and Ali F.J., Ong Hock Sim F.J. dissenting); (1) the land on which the hotel stood was the property of the Federal Government so that it was exempt from the operation of the Control of Rent Act;

(2) Article 153 of the Federal Constitution has no application to cases of contractual rights.

Cases referred to:-

- (1) *Yung Chiang v. Bong Tjhin Oi* [1973] 2 M.L.J. 137.
- (2) *Bhagwati Kishore Tandon v. Deputy Commissioner, Rewa District A.I.R. (1952) Vindhya Pradesh 78.*
- (3) *Gendal Motilal v. Mathuradas Ramprasad A.I.R. 1951 Nag. 32.*
- (4) *Jupiter General Insurance Co. Ltd. v. Rajagopalan & Anor. A.I.R. 1952 Punjab 8.*
- (5) *Bhaghet Rajinder Kumar Sawhney & Anor. v. State of Jammu and Kashmir A.I.R. 1960 J. & K. 50.*
- (6) *Rameshwar Proshad v. Commissioners Land Reform and Jagirs Madhya Barat & Ors. A.I.R. 1959 S.C. 498.*
- (7) *Achutan v. State of Kerala & Ors. A.I.R. 1959 S.C. 490.*
- (8) *Ramsden v. Dyson (1866) L.R. 1 H.L. 129.*

- A (9) *Plimmer v. Mayor etc. of City of Wellington (1884) 9 App. Cas. 699.*
- (10) *Soong Co. Ltd. v. Teoh Cheng Sim* [1956] M.L.J. 16.
- (11) *Lee Eng Teh & Ors. v. Teh Thiang Seong & Anor.* [1967] 1 M.L.J. 42.

HIGH COURT.

- B K. Thayalan for the plaintiff.
Roger Tan for the defendant.

The following judgment was delivered in the High Court on May 3, 1976:

- C **Chang Min Tat J.:** This is an O.14 application to sign final judgment but can, on the pleadings which mainly raise defences at law, be regarded as a proceeding in lieu of demurrer under Order 25 Rules of the Supreme Court and disposed of as such.

- D The plaintiff is the Malayan Railway Administration, a corporation sole under section 4(1) of the Railway Ordinance 1948. Its right to enter into contracts and sue thereon is provided by section 4(2). The defendant was the lessee under a lease in writing of a building known popularly as the Station Hotel Kuala Lumpur holding the same of the plaintiff for a term certain, and was in fact incorporated to hold the lease and operate the hotel.

- E The relevant lease was for a term of five years commencing from January 1, 1968. It was never registered but there could be no doubt about its effectiveness as an agreement to let. It contained the usual terms and conditions of a lease, but it signally contained no provision for a further term. However, when the term came to an end by the effluxion of time, an extension of one year was agreed to in writing between the parties. The extension expired on December 31, 1973.

- F When the defendant held over, the plaintiff took action to recover possession. It issued a writ, K.L. Civil Suit No. 870/74 on July 22, 1974 but it accepted tenders of rent for part of the period after the expiry of the term and on the advice it received that the defence of a further monthly tenancy could possibly succeed, it withdrew this action and it also caused a notice to be sent to the defendant, giving a calendar month's notice terminating the purported new tenancy. The notice expired on March 31, 1975. The present action was then taken.

- G The defendant continued to rely on this further monthly tenancy. By so doing, it had, as a result, removed from itself any possibility of reliance on whether the notice of termination was reasonably adequate under the circumstances.

- H To the Order 14 application, the defendant raised three defences at law. The first was that the premises were rent controlled premises. The second and third were based on constitutional provisions.

- I It was alleged by the defendant and not denied by the plaintiff that the defendant had managed the hotel business at the Railway Station premises since 1935. It meant that the lease entered into on January 1, 1965 was the last of a series of leases between the owner of the hotel premises and the defendant. It